IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt.Asho & Ors. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.5358/1994
under Articles 226 and 227 of the Constitution of India.

Date of Order : 17th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Agarwal, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Sudesh Gupta, for the respondents.

BY THE COURT :

Land measuring 50 bighas at chak 3 BPN Stone No.106/328 and 107/328 was allotted to one Shri Ishar Singh who died in the year 1956 survived by his widow Smt.Gujari and two sons viz. Tulsi Singh and Damar Singh. After death of Shri Ishar Singh the land above remained under temporary cultivation of Smt.Gujari and renewal was made time to time.

Under Rajasthan Colonisation (Rajasthan Canal Project Pre 1955 Temporary Tenants Government Land Allotment) Conditions 1971 and the Rajasthan

Colonisation (Sale and Allotment of Government Land to Post 1955 Temporary Cultivation Lease Holders and Other Landless Persons in the Rajasthan Canal Project Area) Rules, 1955, 25 bighas of land situated at Stone No.106/328 was allotted to Smt.Gujari widow of Late Shri Ishar Singh deeming her temporary cultivator prior to 1955. At the same time 25 bighas of land situated in chak 3 BPN Stone No.107/328 was declared surplus by an order dated 10.7.1972. Smt.Gujari being aggrieved by the order dated 10.7.1972 preferred a revision petition before the Board of Revenue for Rajasthan, Ajmer which came to be accepted by judgment dated 13.8.1975. The Board of Revenue remanded the matter to the allotting authority to decide the same afresh.

By an order dated 24.5.1985 the allotting authority while declaring Smt.Gujari tenant for 25 bighas of land in chak 3 BPN, Stone No.106/328 treated her in illegal possession of 25 bighas of land in the same chak at Stone No.107/328. The land aforesaid, therefore, was treated surplus as no adult son of Smt.Gujari then applied for allotment of land as landless person. Shri Tulsi Singh, elder son of Smt.Gujari then moved an application under Rule 13(5)(e) of the Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Colony Area) Rules, 1975 (hereinafter referred to as “the Rules of 1975”) for allotment of surplus land. Shri Saudagar

Singh and Shri Jagir Singh, both sons of Late Damar Singh (second son of Smt.Gujari) also became party to the application preferred by Shri Tulsi Singh being legal heirs of Damar Singh. During pendency of application above Shri Tulsi Singh died, therefore, Smt.Asho was substituted as applicant in place of her husband. Above mentioned Smt.Asho, Shri Saudagar Singh and Shri Jagir Singh are the present petitioners.

The application for allotment of land submitted by the petitioners was accepted by the allotting authority by an order dated 10.2.1992. By order dated 10.2.1992 the allotting authority allotted 24.10 bighas land to the petitioners in chak 3 BPN Stone No.107/328. However, prior to the order dated 10.2.1992 a part of land in chak 3 BPN Sector No.107/328 measuring 8.13 bighas was already allotted to one Shri Gurdit Singh (respondent No.4). Aforesaid Shri Gurdit Singh, therefore, being aggrieved by order dated 10.2.1992 preferred an appeal before Revenue Appellate Authority, Bikaner. No appeal giving challenge to the order dated 10.2.1992 was preferred by the State Government. The Revenue Appellate Authority, Bikaner by its judgment dated 29.5.1993 accepted the appeal and set aside the order dated 10.2.1992. The Revenue Appellate Authority while setting aside the order dated 10.2.1992 held that the land in question was not free from encumbrance being already allotted to Shri Gurdit Singh, as such the

same was not surplus land. The Revenue Appellate Authority also held that the application for allotment of surplus land was not preferred by the adult sons of earlier tenant within the time limit prescribed to do so.

The petitioners gave challenge to the judgment dated 29.5.1993 by way of filing a revision petition before the Board of Revenue for Rajasthan, Ajmer which came to be rejected by the judgment dated 19.8.1994. Learned Board of Revenue while refusing to interfere with the judgment passed by the Revenue Appellate Authority, Bikaner held that no illegality was committed by the court subordinate as an application for allotment of surplus land was filed by the adult sons of Smt.Gujari after expiry of the period of limitation and during that period 25 bighas of land in Murrabba No.107/328 was resumed to the State and was further alloted to Shri Gurdit Singh. The Board of Revenue affirmed the order passed by the Revenue Appellate Authority, Bikaner, hence this petition for writ is preferred.

It is contended by counsel for the petitioner that Revenue Appellate Authority, Bikaner as well as Board of Revenue for Rajasthan, Ajmer failed to appreciate the fact that the date for submitting application for allotment of surplus land to the adult sons to the previous tenants was extended upto

31.12.1987. It is also urged that the courts below erred while holding that the land situated in chak 3 BPN at Stone No.107/328 was not a surplus land. According to counsel for the petitioner out of 25 bighas of land only 8.13 bighas of land was allotted to Shri Gurdit Singh, therefore, the remaining land was surplus. It is emphasised that the State accepted decision of the allotting authority dated 10.2.1992 as no appeal was preferred by the State Government giving challenge to that order. The claim of Gurdit Singh was only to the extent of 8.13 bighas of land, therefore, the petitioners are entitled to get allotment of remaining part of land.

No reply to the writ petition is filed on behalf of the respondents except respondent No.4 Gurdit Singh. It is not at all in dispute that the rights of Gurdit Singh are confined to the extent of land allotted to him measuring 8.13 bighas. Counsel for the petitioners specifically stated that the petitioners are entitled for allotment of land in chak 3 BPN stone No.107/328 except the land already allotted to respondent No.4 Gurdit Singh.

Heard counsel for the parties.

It is not at all in dispute that the petitioners are legal heirs of Ishar Singh, Gujari, Shri Tulsi Singh and Shri Damar Singh. Shri Ishar

Singh was in temporary cultivation of 50 bighas of land chak 3 BPN Stone No.106/328 and 107/328. The adult sons of Ishar Singh and Gujari submitted application for allotment of surplus land before the extended time limit i.e. 31.12.1987. In view of it it could not be said that the application was not submitted by the adult sons within the time limit prescribed. It is pertinent to note that by order dated 10.2.1992 the allotting authority considered the petitioners eligible for allotment of surplus land and no challenge to that order was given by the State Government. The State Government as such accepted the order passed by the allotting authority. The only appeal before the Revenue Appellate Authority was preferred by Shri Gurdit Singh. The rights of Shri Gurdit Singh were confined to the land allotted to him measuring 8.13 bighas. In view of it cancellation of allotment made in favour of the petitioners of entire 25 bighas of land by the appellate authority was beyond the scope of appeal so preferred. The appellate authority could have cancelled the allotment made in favour of the petitioners to the extent of 8.13 bighas of land which was already allotted to Shri Gurdit Singh appellant before the Revenue Appellate Authority. The Board of Revenue also failed to appreciate this aspect of the matter.

The courts below while setting aside the order dated 10.2.1992 erroneously reached at the

conclusion that the land after resumption with the State and after allotment to Shri Gurdit Singh was not surplus. In fact only 8.13 bighas of land was allotted to Shri Gurdit Singh, therefore, the remaining part of land which was earlier under the tenancy of Shri Ishar Singh was surplus and atleast that part of land could have been allotted to the petitioners. The order passed by the allotting authority was erroneous only to the extent of allotment of land to the petitioners which was allotted to Shri Gurdit Singh.

In view of whatever discussed above the writ petition deserves acceptance. The same, therefore, is allowed. The orders passed by the Board of Revenue dated 10.2.1992 and the Revenue Appellate Authority dated 29.5.1993 are hereby declared illegal and same are quashed and set aside. The order passed by the appellate authority dated 10.2.1992 is modified and the petitioners are declared entitled for allotment of land in chak 3 BPN Stone No.107/328 except the land measuring 8.13 bighas already allotted to Shri Gurdit Singh.

(GOVIND MATHUR),J.

kkm/ps.